

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

KARYL CLARKE,

Case No. 2:24-cv-00422-RFB-EJY

Plaintiff,

V.

ORDER

BUDGET SUITES OF AMERICA, et al.,

Defendants.

Pending before the Court is Plaintiff's Motion to Amend Complaint. ECF No. 29. Defendant Budget Suites of America ("Budget Suites") responds objecting on one basis only; that is, Defendant says service by Plaintiff was ineffective because it was untimely and, therefore, amendment would be futile. ECF No. 30.

14 It is true that Plaintiff commenced this action on March 1, 2024 by filing an application to
15 proceed *in forma pauperis* together with a civil rights Complaint. ECF Nos. 1, 1-1. At that juncture
16 there was no operative complaint on which Plaintiff was permitted to proceed. Thereafter, the
17 Complaint was screened under 28 U.S.C. § 1915, dismissed without prejudice, and Plaintiff was
18 granted leave to amend. ECF No. 3. Again, there was no operative complaint on which Plaintiff
19 was permitted to proceed with service. *Id.*

20 Plaintiff filed a request for extension to file an amended complaint (ECF No. 6), which was
21 granted on June 14, 2024. ECF No. 8. Plaintiff timely filed his Amended Complaint on July 3, 2024
22 (ECF No. 10), which was screened and which Order permitted service of process on Defendant
23 Budget Suites. ECF No. 12. This Order was issued on August 1, 2024. *Id.* Defendant admits it
24 was served on August 14, 2024. ECF No. 30. Under well settled law, screening is required before
25 a litigant proceeding *in forma pauperis* may proceed to serve a pleading. *Glick v. Edwards*, 803
26 F.3d 505, 507 (9th Cir. 2015). Given the undisputed facts and applicable law, the Court finds
27 Plaintiff's Second Amended Complaint is not futile based on a failure to effect timely service as

1 service was accomplished thirteen days after the Court issued its Order permitting the same. ECF
 2 Nos. 12, 14.

3 Accordingly, IT IS HEREBY ORDERED that Plaintiff's Motion to Amend Complaint (ECF
 4 No. 29) is GRANTED.

5 IT IS FURTHER ORDERED that the Clerk of Court is respectfully requested to separate
 6 pages 20 through 28 of ECF No. 29 from the remainder of that filing, and file the same on the docket
 7 as Plaintiff's Second Amended Complaint and Jury Demand.

8 IT IS FURTHER ORDERED that the Clerk of Court **must** send Plaintiff **three** USM-285
 9 forms to Plaintiff.

10 IT IS FURTHER ORDERED that Plaintiff **must** complete one USM-285 form for each
 11 individual Defendant named in the Second Amended Complaint to the best of his ability and return
 12 the same to the U.S. Marshal no later than **January 21, 2025**. The address to which the completed
 13 USM-285 form is to be returned is as follows:

14 Gary G. Schofield
 15 U.S. Marshal
 16 District of Nevada
 17 Lloyd D. George Federal Courthouse
 18 333 Las Vegas Blvd. S., Suite 2058
 19 Las Vegas, Nevada 89101

20 IT IS FURTHER ORDERED that the Clerk of Court **must** issue Summons for Jacob
 21 Powell, Abel Moreno, and Jake Becker and deliver the same, together with three copies of Plaintiff's
 22 Second Amended Complaint, to the U.S. Marshal Service.

23 IT IS FURTHER ORDERED that the U.S. Marshal Service **must** attempt service on Jacob
 24 Powell, Abel Moreno, and Jack Becker no later than fourteen (14) days after receipt of the USM-
 25 285 from Plaintiff, which service must include the Second Amended Complaint and Summons.

26 IT IS FURTHER ORDERED that Defendant Budget Suites' responsive pleading to
 27 Plaintiff's Second Amended Complaint is due on or before **January 21, 2025**.

28 Dated this 30th day of December, 2024.


 ELAYNA J. YOUSCHAH
 UNITED STATES MAGISTRATE JUDGE